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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/885,721	06/20/2001	John G. Babish	T9667	3304

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EXAMINER
MELLER, MICHAEL V

ART UNIT	PAPER NUMBER
1654	

DATE MAILED: 01/28/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/885,721	BABISH ET AL.	
	Examiner	Art Unit	
	Michael V. Meller	1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 November 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1, 3, 4, 6-9, 12, 13, 15-17 and 43-50 are* is/are pending in the application.

4a) Of the above claim(s) *43-50* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 3, 4, 6-9, 12, 13, 15-17 are* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *14* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

The restriction requirement is maintained for the reasons of record. Claims 43-50 remain withdrawn from further consideration by the examiner for the reasons of record.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in-
> (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
> (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1, 3, 4, 6, 9, 12, 13, 15, are rejected under 35 U.S.C. 102(b) as being anticipated by Ogasahara et al., Millis et al., Spinelli et al., Thiele et al., Grant '561, or Grant '865.

The references each teach that a composition comprising a CO_2 extract of hops is used in a food or a capsule or one of the other forms claimed in claim 1.

Claims 1, 3, 4, 6-9, 12, 13, 15-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Bavisotto et al.

The reference teaches a composition comprising a CO_2 extract of hops which is in a food.

Claims 1, 3, 4, 6-9, 12, 13, 15-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Newmark et al.

The reference teaches a composition comprising a CO_2 extract of hops which is in a capsule.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 3, 4, 6-9, 12, 13, 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogasahara et al., Millis et al., Spinelli et al., Thiele et al., Grant '561, Grant '865, or Bavisotto et al. in view of Haas, Versluys and Todd, Jr.

The teachings of the primary references are above.

The teachings of Haas, Versluys and Todd, Jr. are also of record.

It would have been obvious to add vitamins and carbohydrates and the like to the compositions of the primary references since Haas and Todd make it clear that such hop extracts routinely have sweetners and vitamins in them especially if they are used in a food. One of ordinary skill in the art would have been clearly motivated to add vitamins and sweetners to the hops extracts since they are used in a food. Foods routinely have sweetners and vitamins in them for flavoring and for health reasons.

Claims 1, 3, 4, 6-9, 12, 13, 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haas in view of Ogasahara et al., Millis et al., Spinelli et al., Thiele et al., Grant '561, Grant '865, or Bavisotto et al. and further in view of Versluys and Todd, Jr.

The teachings of the primary references are above.

The teachings of Haas, Versluys and Todd, Jr. are also of record.

It would have been obvious to use a CO_2 extract of hops in Haas since Ogasahara et al., Millis et al., Spinelli et al., Thiele et al., Grant '561, Grant '865, and Bavisotto et al. all make it clear that CO_2 extraction of hops is well known in the art and is commonly used.

It would have been obvious to add vitamins to the composition Haas since Todd makes it clear that such hop extracts routinely have vitamins in them especially if they are used in a food. One of ordinary skill in the art would have been clearly motivated to add vitamins to the hops extracts since they are used in a food. Foods routinely have sweetners and vitamins in them for flavoring and for health reasons.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 703-308-4230. The examiner can normally be reached on Monday thru Friday: 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback can be reached on 703-306-3220. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-0294 for regular communications and 703-308-0294 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

Michael V. Meller
Primary Examiner
Art Unit 1654

MVM
January 24, 2003